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IN THE

Supreme Court of the United States

October Term, 1960

RAYMOND COHEN, JOSEPH E. GRACE, EDWARD BATTISFORE AND EDWARD WALKER,

Petitioners

v.

HIGHWAY TRUCK DRIVERS AND HELPERS, LOCAL 107, OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, an Unincorporated Association, by THOMAS GRAHAM, CARMEN GRASSO, ANTHONY HNIZDO, JR., KARL M. JENSEN, JOHN C. JONES, EDWARD P. MCCORMICK, JOHN REGAN, WILLIAM D. STASEN and ROBERT D. THOMAS, Trustees Ad Litem

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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INDEX

	Page
Opinions Below	1
Jurisdiction	2
Questions Presented	2
Statute Involved	2
Statement	3
Reasons for Granting the Writ	6
Conclusion	19
Appendix A—Section 501(a) of the Labor-Management Reporting and Disclosure Act of 1959	20
B—Excerpts from Opinion of the District Court	21
C—Amended Opinion of the United States Court of Appeal for the Third Circuit	35

TABLE OF CITATIONS

Cases:

Atlantic Coastline Railroad Co. v. United States, 66 Ct. Cl. 378 (1928)	12-13
Connole v. Norfolk & Western Railway Co., 216 Fed. 823 (1914)	13
Duplex Printing Press Co. v. Deering, 254 U. S. 443 (1921)	13
In the Matter of Grace et al., 397 Pa. 254, 154 A. 2d 592 (1959)	4, 18
Manhattan Properties, Inc., v. Irving Trust Co., 291 U. S. 320 (1934)	13
Pennsylvania Railroad Co. v. International Coal Co., 230 U. S. 184 (1913)	12

TABLE OF CITATIONS—*Continued*

Cases: Page

S.E.C. v. Robert Collier & Co., Inc., 76 F. 2d 939 (2d Cir. 1935) 12

S.E.C. v. Sunbeam Gold Mines Co., 95 F. 2d 699 (9th Cir. 1938) 12

United States v. St. Paul, M. & M. Railroad Co., 247 U. S. 310 (1918) 13

Statutes and Congressional Proceedings:

Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 519, 29 USCA 141 2 et seq.

Section 2(b) 6

Section 2(c) 6

Section 501(a) 6, 10

Section 503(b) 11, 12

Congressional Record, 86th Congress, 1st Session:

April 23, 1959, Vol. 105, No. 62 (Remarks by Senator McClellan on Labor-Management Reporting and Disclosure Bill) 8-9

September 3, 1959, Vol. 105, No. 154 (Remarks by Senator Kennedy on Labor-Management Reporting and Disclosure Bill) 7-8

August 12, 1959, vol. 105, No. 137 (Remarks by Congressman O'Hara on Labor-Management Reporting and Disclosure Bill) 9-10

House of Representatives Report No. 741, 86th Congress, 1st Sess. (1959) Supplementary Views of House Labor Committee on Landrum-Griffin Bill) 13

Senate Report No. 187, 86th Congress, 1st Sess. (1959) (Minority Report on Kennedy-Ervin Bill) 11

U. S. Code Congressional and Administrative News, 1959, pp. 3031, 3068 11

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Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit, entered in the above entitled case on November 2, 1960.

CITATIONS TO OPINIONS BELOW

The opinion of the District Court (A. 5a) printed in Appendix B hereto, *infra*, p. 21, is reported in 182 F. Supp. 608. The opinion of the Court of Appeals, printed in Appendix C hereto, *infra*, p. 35, is not yet reported.

JURISDICTION

The judgment of the Court of Appeals was entered on November 2, 1960. Rehearing was denied on December 19, 1960. The jurisdiction of this Court is invoked under 28 U.S.C. §1254 (1).

QUESTIONS PRESENTED

1. Whether the Labor-Management Reporting and Disclosure Act of 1959 creates jurisdiction in the Federal Courts to enjoin the spending of union funds under the authorization of a resolution adopted by the members of the union.

2. Whether it is unlawful under the letter or spirit of any provision of the Labor-Management Reporting and Disclosure Act of 1959 for the members of a union, by a nearly unanimous vote at a regular meeting, to authorize by resolution the spending of union funds for the payment of legal expenses of the officers of the union in certain legal actions brought against the officers, especially where the resolution contains a statement setting forth a valid union purpose, and there is evidence in the record which supports the statement.

STATUTE INVOLVED

The statutory provision involved is sub-section 501 (a) of the Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 519, 29 USCA 141. It is printed in Appendix A, *infra*, p. 20.

STATEMENT

On November 10, 1959, nine members of Local 107 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers filed a complaint[1] under subsection 501 (b) of the Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 519, 29 USCA 141, in which was included a prayer to enjoin the officers of Local 107 from expending the funds of the union under a resolution adopted on September 20, 1959, by the members of the union authorizing the payment by the union of legal expenses of the officers of Local 107 in certain pending legal actions.

A hearing on the prayer for an injunction was held by the District Court on December 10, 1959. At this hearing no testimony was offered by either side on the merits, but the relevant facts were agreed to by stipulation. The facts agreed to are found in the statements of counsel at the hearing (A. 12a-20a); the stipulation signed by counsel (A. 24a-30a); and the supplement to Exhibit "G" of the stipulation (A. 30a-58a). Briefly these facts are as follows:

On September 1, 1959, the District Attorney of Philadelphia filed a petition with Judge Joseph E. Gold of the Court of Quarter Sessions of Philadelphia for the convening of a special investigating grand jury to inquire into the affairs of Local 107 (A. 40a-45a). In this petition the district attorney made sweeping charges of the wrongdoing against the "officers, agents, employees and servants of Local 107." Included among these was the charge that Local 107 used illegal methods in obtaining union objectives, gains and concessions from employers under contract with Local 107 (A. 43a-47a).

On September 3, 1959, Judge Gold granted the dis-

[1] The main body of the complaint dealt with a prayer for an accounting by the officers of Local 107 for their handling of the funds of the union for a period prior to the enactment of the Labor-Management Reporting and Disclosure Act of 1959. The District Court dismissed this portion of the complaint on the ground that the Act of 1959 was not intended by Congress to apply retroactively.

trict attorney's petition and issued a written statement repeating the charges contained in the petition and more directly relating these charges to Local 107, itself. The court in this statement drew special attention to the fact that Local 107 was charged with accomplishing its purposes by violence and threats of violence (A. 46a).

In his charge to the Special Grand Jury on September 3, 1959, Judge Gold again repeated the charges made by the district attorney against Local 107. Further, he gave instructions to the grand jury concerning the legitimate and illegitimate activities of labor unions. Then he charged the jury, among other things to inquire into whether Local 107 had engaged in any criminal acts for the purpose of obtaining illegal gains or legal concessions by illegal means from employers with whom Local 107 deals (A. 56a).

On September 14, 1959, petitioners filed a petition in the Supreme Court of Pennsylvania for a writ of prohibition against the special grand jury investigation. This petition was subsequently granted and the investigation was prohibited by the Supreme Court on October 6, 1959. *In the Matter of Grace et al.*, 397 Pa. 254, 154 A. 2d 592 (1959).

On September 15, 1959, the District Attorney of Philadelphia applied to Judge Vincent A. Carroll of the Court of Quarter Sessions of Philadelphia for leave to prefer a district attorney's bill of indictment to the regular September grand jury against petitioners (A. 35a). On September 16, 1959, Judge Carroll granted the application (A. 34a), and the grand jury returned a true bill of indictment against petitioners and others, on September 19, 1959, charging them with conspiracy to cheat and defraud the members of Local 107 (A. 32a).

On September 20, 1959, at a regular monthly meeting of Local 107, attended by about 3000 members, a resolution was moved, seconded and adopted almost unanimously (there being about five or six votes against it, A. 18a) authorizing Local 107 to pay the legal expenses of petitioners in the pending actions in which they were involved (A. 28a). The resolution expressed the confidence

of the members of Local 107 in their officers and stated that the legal actions referred to were aimed at breaking up the union and were in reality directed not at the officers, but at the members of Local 107 and their good contracts and working conditions (A. 28a).

Subsequent to the adoption of the resolution of September 20, petitioners were taken into custody under the indictment returned by the September grand jury and then were released on bail pending the determination of a petition for a writ of habeas corpus which they filed attacking the legality of the proceedings against them (A. 38a).

Under the authority of the resolution of September 20, Local 107 paid funds belonging to the union to counsel for the officers of Local 107 for services rendered the officers of Local 107 in the legal actions referred to above and in the proceedings in the courts below (A. 24a-30a).

On March 24, 1960, the District Court entered an order enjoining petitioners from using the funds of Local 107 for the payment of their legal expenses in the actions referred to above, pursuant to the resolution of September 20, or otherwise. Without referring to any specific language in the Constitution of the International Union, the Act of 1959, or the legislative history of the Act of 1959, prohibiting the action taken by the union, the District Court ruled that the resolution of September 20 was "ultra-vires" and in violation of the "spirit and letter" of the Act of 1959.

On April 22, 1960, petitioners took an appeal to the United States Court of Appeals for the Third Circuit. On November 2, 1960, the Court of Appeals affirmed the order of the District Court, and filed a short opinion essentially relying on the opinion of the District Court. On November 15, 1960, a petition for a rehearing was filed. On December 14, 1960, the court issued an order amending the opinion of November 2, 1960, to correct certain ambiguities and errors referred to in the petition for rehearing. The rehearing was denied on December 19, 1960.